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10/053,935	01/24/2002	Gregory N. Weismantel	125090.00007	5964
26707	7590	01/09/2008	EXAMINER	
QUARLES & BRADY LLP			BEKERMANN, MICHAEL	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/053,935  
Filing Date: January 24, 2002  
Appellant(s): WEISMANTEL, GREGORY N.

**MAILED**

**JAN 09 2008**

**GROUP 3600**

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Robert D. Atkins  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/26/2007 appealing from the Office action mailed 07/06/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,993,506

JAIN

1-2006

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1, 2, 6, 7, and 21-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain (U.S. Patent No. 6,993,506).**

**Regarding claims 1, 7, 21-29, 31-37, 39-42, 44-46, and 48,** Jain teaches sending XML messages containing extended data attributes to a trading partner using an e-commerce portal (GUI) (Column 2, Lines 8-10 and 25-38 and Column 19, Lines 31-43). Since the buyer is receiving information about the supplier, inputting of the data by the supplier (along with data entry screens) is inherent. Further, the extended data attributes must inherently be stored and this storage is considered to be a database. Jain teaches various instances of storing information in databases throughout the document. Jain does not appear to specify the exact arrangement (tables) of the extended data attributes as claimed. However, the arrangement of the data would not affect the steps being taken by the method, which Jain teaches. Official notice is taken

that arrangement of data to influence speed is old and well known. Larger amounts of data may need to be arranged in a specific format for access speeds to be optimal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange the data using any number or arrangement of tables depending on how fast the data would need to be accessed.

The above claims introduce the specific data content of the data storage (specific data attributes, specific content of tables), it could be argued that while Jain may teach some of this data content, Jain does not teach all of it. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have stored any type of data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

**Regarding claims 2, 30, 38, 43, and 47**, Jain teaches the XML messages as containing references to or values of shopping cart data and product configuration data (this reads on product, pricing, and promotions) (Column 19, Lines 31-43).

**Regarding claim 6**, Jain teaches the supplier as having a password (Column 5, Lines 9-13). This reads on authorization security measures.

### **(10) Response to Argument**

Appellant argues that whether "the tables and their structure would or would not affect the steps taken in the claimed invention is not relevant in the 103 analysis...the standard is that the differences must be obvious, not that they must be immaterial". Appellant's claim 1 is a method claim with steps of providing a software application program, inputting data into tables (described in the claim as "user-defined extended data attributes"), transmitting data (described in the claim as "standard data attributes"), and transmitting more data (described in the claim as "the extended data attributes"). No matter how many tables there are, or what data is to be inputted, the method will function identically. The Examiner, however, did not disregard this feature as immaterial. This was simply an observation to support the Examiner's finding of obviousness. The Examiner's uncontested taking of Official Notice teaches that it is old and well known to arrange data in such a way as to enhance processing speed. This is a case in which the differences are in fact obvious as opposed to immaterial. This leads into Appellant's next argument.

Appellant further argues "the patent application does not provide that the claimed arrangement of the standard and extended data attributes is for speed...rather the arrangement...as claimed keeps the standard and extended attributes coupled together". The motivation for altering an arrangement of data does not need to be the same as Appellant's motivation. If one skilled in the art would understand to make any such modification for any reason, that is enough to make that modification obvious. In

many situations there is neither a motivation or evident lack of motivation to make a modification articulated in cited references. Numerous scenarios typically find the prior art reference disclosing aspects of claimed subject matter, but fail to specifically point the way toward the combination to arrive at Appellant's invention. A judgment must be made whether a person of ordinary skill in the art would have had sufficient motivation to combine individual elements forming the claimed invention, as in this particular situation. In re Clinton, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976).

Appellant further argues that "claim 1 is materially influenced by the plurality of tables". Examiner reiterates that, since data is merely being input and transmitted, the way that data is arranged, while not immaterial, does not change the scope of the claim.

Appellant also refers to the Examiner's statement of non-functional descriptive material as a "printed matter rejection" and argues "the Court [Lowry, 32 F.3d 1579, 32 USPQ2d 1031] specifically held that such rejections do not apply to computer based methods". In the rejections above, Examiner never mentioned the words "printed matter". In the case of In Re Lowry, Lowry's claimed invention involved an organization of information and its interrelationships, which is commonly referred to as a "data structure". Appellant's invention contains no such interrelationships, and in none of Appellant's claims does there exist a data structure. Appellant further argues that "the computer based method manages the information by imposing a physical organization to it...the data fields of the plurality of tables...are functionally involved with the steps recited". Once again, there are no interrelationships recited in Applicant's claims nor is there a step of managing such data. Looking at Appellant's tables, the second, third

and fourth tables appear to contain subsets of data found in the first table. This does not actively link these tables, and may merely be viewed as a copying and reproduction of data between tables. Once again, there are no interrelationships or data structure qualities claimed. While In Re Lowry pertained to data structures, Appellant's claims merely pertain to data and the way in which it is stored.

These arguments equally pertain to Appellant's other independent claims 26, 32, 40, and 44.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Bekerman



Conferees:

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